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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/718,255  | 11/20/2003  | Roberto Capodieci    | CRI-101             | 8148             |
| 43419 7590 04/08/2009<br>PAULEY PETERSEN & ERICKSON<br>2800 WEST HIGGINS ROAD<br>SUITE 365<br>HOFFMAN ESTATES, IL 60169 |             |                      |                     |                  |
| EXAMINER  |             |                      |                     |                  |
| FLORES SANCHEZ, OMAR  |             |                      |                     |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
| 3724  |             |                      |                     |                  |
| MAIL DATE   |             | DELIVERY MODE        |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/718,255

**Applicant(s)**

CAPODIECI, ROBERTO

**Examiner**

Omar Flores-Sánchez

**Art Unit**

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 22-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

1. This action is in response to applicant's amendment received on 01/22/09.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-10, 12, 14, 16-20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Capodiecì (6,231,330 B1) in view of Maniak et al. (6,953,596 B2).

Capodiecì discloses the invention substantially as claimed including an ultrasonic resonant horn (i.e., Fig. 1-13), a cutting tool (i.e., 526), and a sharpened and generally cutting surfaces 532, frequency of 20 KHz or higher (col. 8, line 53). Capodiecì doesn't show a plurality of longitudinal oriented first blades and a plurality of transversely oriented second cutting edges). However, Maniak et al. teaches the use of a plurality of longitudinal oriented first blades 58 and a plurality of transversely oriented second cutting edges 62 for the purpose of cutting continuous sheet of dough while minimizing the tendency of the product to stick to the blades. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Capodiecì by providing the plurality of longitudinal oriented first blades and the plurality of transversely oriented second cutting edges as taught by Maniak et al. in order to obtain a device that cutting continuous sheet of dough while minimizing the tendency of the

product to stick to the blades. Also, Maniak et al. teaches the second blades between the first blades (i.e. Fig. 2-3), a continuous cutting pattern (i.e., see Fig. 2-3), a cutting depth of about of about 1 mm to about 100 mm and first cutting blades are positioned at about 3 mm to about 100 mm (inherently disclosed, see col. 5, lines 1-8, the description of the size of the dough), an angle of 1° to about 5° (see col. 9, lines 40-43), a first composite blade element (see Fig. 2, the blades forming the pattern 64 at the left side end of the die cutter 50) a second composite blade element having an open end (see Fig. the blades 58 and 62 adjacent to the left pattern and forming the second pattern 64 from left to right).

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Capodieci (6,231,330 B1) in view of Maniak et al. (6,953,596 B2) and Hara et al. (3,932,231).

The modified device of Capodieci discloses the invention substantially as claimed except for a polished carbide coating. However, Hara et al. teaches the use of tungsten carbide coating (see Abstract) for the purpose of having a wear resistance tool. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Capodieci by providing the tungsten carbide coating as taught by Hara et al. in order to obtain a device that have a wear resistance tool.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Capodieci (6,231,330 B1) in view of Maniak et al. (6,953,596 B2).

The modified device of Capodieci discloses the claimed invention except for a frequency of at least about 10 KHz. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Capodieci by providing the

frequency of at least about 10 KHz, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 f.2d 272, 205 USPQ 215 (CCPA 1980).

### ***Response to Arguments***

6. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Maniak et al. reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). The affidavit must set forth the dates when those acts were performed to establish diligence.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Omar Flores-Sánchez whose telephone number is 571-272-4507. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/O. F./  
Examiner, Art Unit 3724  
4/6/2009  
/Boyer D. Ashley/  
Supervisory Patent Examiner, Art Unit 3724